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July 18, 2007

## VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-B204  
Washington, DC 20554

**Re: Notice of Oral *Ex Parte* Communications:  
WT Docket Nos. 06-150, 06-169; and 96-86; PS Docket No. 06-229  
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; and**

**Docket No. 05-265 - Reexamination of Roaming Obligations of CMRS  
Providers**

Dear Madam Secretary:

On behalf of Cellular South, Inc. ("Cellular South"),<sup>1</sup> and in accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, we hereby provide you with notice of oral *ex parte* presentations in connection with the above-captioned proceedings.

Presentations occurred on July 17, 2007 in meetings with the following Commission personnel:

Barry Ohlson and Renee Crittendon, advisors to Commissioner Jonathan S. Adelstein;  
and

Angela E. Giancarlo, advisor to Commissioner Robert M. McDowell.

Attending the meetings on behalf of Cellular South were the undersigned and Adam Thomas, Summer Associate employed by this law firm.

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<sup>1</sup> Cellular South is a privately-owned wireless carrier serving all of Mississippi and portions of Alabama, Tennessee and Florida. Most of the area served by Cellular South is rural in nature.

July 18, 2007

Page 2

In addition to the meetings that are summarized below, Sherry Stegall, Senior Vice President of Cellular South, had a telephone discussion on July 17, 2007 with Ms. Giancarlo concerning EVDO data services that are provided by Cellular South in some parts of the company's service area and the inability of Cellular South to obtain an automatic roaming agreement that includes EVDO data services with any large wireless carrier. In that discussion Ms. Stegall stated that the EVDO service provided by Cellular South makes use of T-1 circuits in the backhaul of EVDO traffic, and that such circuits are an essential element of the network.

#### 700 MHz Issues

In the referenced meetings Cellular South's representatives requested that the 700 MHz auction and service rules to be adopted by the Commission:

- A. Include a license for paired spectrum in the Upper 700 MHz Band that would be offered with EA or CMA-sized service areas.
- B. Provide for geographic build-out requirements in both the Lower and Upper 700 MHz Bands that have a "keep-what-you-use" standard combined with construction milestones with proper incentives for carriers to make prompt use of 700 MHz spectrum acquired in the auction. The standards should not allow a licensee that misses the first or subsequent milestones to have a second chance to meet them late in the initial license term.
- C. Include a "Rural Market Bidding Credit" to promote broadband service availability in rural markets, such as the following: Bidders for Block B CMA licenses in the Lower 700 MHz Band would qualify for a 20% (or larger) bid credit for any of the 428 Rural Service Areas if they certify that (i) they are not a "large wireless carrier" or a "large cable operator" (i.e., companies with average gross revenues exceeding \$5 billion for the three years preceding the auction) and (ii) that they do not have a "material relationship" with a "large wireless carrier" or a "large cable operator."

#### Automatic Roaming Issues

In the same meetings Cellular South's representatives discussed the need for Commission rules to promote the availability of automatic roaming agreements between carriers for voice and all forms of data services, including wideband data. Consumers need and should have access to voice and data services at all levels, including 3G and higher, when they leave their home carrier's service area. Cellular South has constructed EVDO facilities in some portions of its service area but, for over a year, has been rebuffed by larger carriers with compatible networks whenever an automatic roaming agreement has been requested. Where the market fails, as it has here, the Commission must step in to allow consumers to use their wireless equipment to access other carriers' high speed networks.

July 18, 2007

Page 3

Cellular South requests that the Commission act promptly to require licensees to negotiate in good faith to enter into automatic roaming agreements where it is technically feasible to do so. Cellular South supports the position of the Rural Cellular Association as filed in WT Docket No. 05-265.

While the Commission can and should exercise its Title I ancillary jurisdiction as necessary to protect consumer interests to promote the availability of automatic roaming ("AR"), the Commission also should exercise its Title II jurisdiction over AR. Roaming (i) should be treated as a wholesale service, and (ii) when AR is analyzed at the wholesale level, it is a telecommunications service that is subject to the Commission's Title II authority.<sup>2</sup> This classification is consistent with past Commission rulings regarding cable modem, wireline and wireless broadband Internet access services as well as the *Brand X* case.<sup>3</sup>

A. Under Title II, The Regulatory Status of Roaming Must be Analyzed at the Wholesale Level

Because the transaction and contractual relationship for the service is between two carriers, the provision of AR is a wholesale service, and the classification of the retail service provided to the ultimate end-user via automatic roaming is irrelevant.<sup>4</sup> Analysis of AR must focus on the nature of the service provided at the wholesale, not the retail, level.

B. Under Title II, Roaming is a Telecommunications Service

When carriers enter into AR agreements the relationship involves each carrier purchasing from the other service on a wholesale basis. The carrier is the user under that relationship, not the retail subscriber. The Carrier/user's expectation is that the service provided will be transport by the host carrier of communications over its system to and from the requesting [carrier/user]'s roaming subscriber.<sup>5</sup> AR meets the definition of "Telecommunications": "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43). The host carrier does not change

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<sup>2</sup> See SouthernLINC Wireless *Ex Parte* Communication, WT Docket No. 05-265 (filed July 2, 2007) pp 4-10 ("SouthernLINC *Ex Parte*")

<sup>3</sup> *National Cable Telecommunications Association v. Brand X Internet Services*, 545 U.S. 967 (2005)

<sup>4</sup> *Time Warner Cable Request for Declaratory Ruling the Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3520-3521 at para 15 (2007).

<sup>5</sup> See *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling, FCC 07-30 (rel March 23, 2007) at para 30.

July 18, 2007

Page 4

the form or content of the information sent to or received by the roaming customer (any changes that do occur are part of routing the message, thus specifically exempted from classification of an "information service" for these variances. 47 U.S.C. § 153(20).) And AR meets the definition of "Telecommunications Service" -- "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available immediately to the public, regardless of the facilities used." 47 U.S.C. § 153(46). Because it is properly classified as a telecommunications service, the provision of wholesale AR is subject to the provisions of Title II.

In addition to its authority to under Titles I and II, the Commission may also act pursuant to its plenary authority under Title III to impose roaming obligations on radio licensees for voice or data services transmitted over their networks. In this respect it would not be necessary for the Commission to determine whether the data service offered is a "telecommunications" service or an "information" service, or if it is interconnected with or otherwise "touches" the public switched telephone network.<sup>6</sup>

#### Summary

The Commission has before it a unique opportunity to expedite the availability of broadband services to rural America. Cellular South respectfully urges the Commission to adopt 700 MHz auction and service rules with (A) a mix of geographic license sizes in both the Upper and Lower 700 MHz Bands, (B) geographic area build-out requirements for all 700 MHz licenses that require prompt construction with no second chance to satisfy an earlier benchmark by a showing of construction later in the license term, and (C) a "Rural Market Bidding Credit" to promote broadband service availability in rural markets.

With regard to automatic roaming Cellular South requests that the Commission require licensees to negotiate in good faith to enter into automatic roaming agreements for all forms of voice and data services where it is technically feasible to do so. In particular there is an urgent need to facilitate automatic roaming for wideband data. The Commission should exercise its Title I, Title II and/or Title III jurisdiction to protect consumers and assure that no carrier unreasonably denies consumers the benefits of data services when they leave their home carrier's service area.

Sincerely,



David L. Nace

Attorney for Cellular South, Inc.

cc: Chairman Kevin Martin (by email)  
Commissioner Michael Copps (by email)

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<sup>6</sup> See, SouthernLINC Ex Parte at 11-14.

July 18, 2007

Page 5

Commissioner Jonathan Adelstein (by email)

Commissioner Deborah Tate (by email)

Commissioner Robert McDowell (by email)

Erika Olsen (by email)

Bruce Gottlieb (by email)

Barry Ohlson (by email)

Aaron Goldberger (by email)

Angela Giancarlo (by email)

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